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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,695	06/11/2001	Gregor Reid	12139Z	3974

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Garden City, NY 11530

EXAMINER

WOITACH, JOSEPH T

ART UNIT	PAPER NUMBER
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1632

DATE MAILED: 04/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/878,695

Applicant(s)

REID ET AL.

Examiner

Joseph T. Woitach

Art Unit

1632

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 31 March 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1,3,5,7-10,12,14-17,19,21-25,27 and 29.  
Claim(s) withdrawn from consideration: 2,8,9,15,16 and 22-24.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☒ Other: See Continuation Sheet.

*Joe Woitach*

Continuation of 11. does NOT place the application in condition for allowance because:

Applicants summarize the basis of the specific art rejections and summarize the teachings of the cited references. In each case Applicants argue that each of the references fail to teach the oral administration of lactobacillus to treat vaginal infections. Applicants arguments have been fully considered, but not found persuasive. As noted previously both Ford, Velraeds and Reid teach various routes of administration including oral administration. While the working examples do not reduce to practice oral delivery, there is no suggestion that the disclosed invention would be limited to the working examples. Moreover, Reid specifically teaches that providing a healthy flora affects bacterial interferences for treatment (page 336, Clin. Micro. Rev.). Reid provide an overview for the use and the affect of oral delivery of lactobacillus in the discussion of probiotics (page 340, second column). Applicants arguments have been fully considered but not found persuasive because the cited references teach to use the claimed species of lactobacillus for treating urogenital disorders, which include vaginal infection. By either creating a healthy urogenital flora or through bacterial interference, the cited reference each teach the oral delivery of lactobacillus.

With respect to the obvious double patenting rejection, Applicants note that the allowed claims are directed to establishing a healthy urogenital flora while the instant claims are directed to treating vaginal infections (pages 8-9). Applicants arguments have been fully considered, but not found persuasive. As noted previously, there is no active step that distinguishes the claimed method from that of '051. The consequence of establishing a healthy urogenital flora also treats vaginal infections in any given individual. In the instant case, the preamble of the method claims indicating the consequence of orally administering lactobacillus is insufficient to distinguish the claimed inventions.

Continuation of 13. Other: Claims 1, 2, 8, 9, 15, 16 and 22-24 are linking claims as indicated in the restriction requirement (see bottom of page 2 of restriction requirement). Since linking claim 1 was not found allowable, claims 2, 8, 9, 15, 16 22-24 which encompass the administration of a second probiotic have been withdrawn and not been considered. Further, while some of the claims to group II have been canceled, the linking claims still encompass restricted/withdrawn group II.